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U.S. v. *A.L.A.*

Case Summary

In 2003, a group of libraries, library patrons, and website publishers joined with the American Library Association to file suit against the United States in reaction to the Internet filtering requirement of CIPA (Child Internet Protection Act). CIPA required that any public or school library which receives funding from the federal government as part of the e-Rate or LSTA (Library Services and Technology Act) install an Internet content filter to block sites that contain "obscene, (b) child pornography, or (c) harmful to minors (for computers that are accessed by minors)" (*Children's*). The initial group of plaintiffs, including the ALA, argued that this requirement violated the constitutional right to the freedom of speech.

The case passed several lower courts, which each upheld the ruling that CIPA "incited" libraries to violate the first amendment. They all tended to agree that the Internet filters had a strong tendency to "overblock" sites that contained constitutionally protected speech. Finally, they argued that the public library constituted a public forum, "[r]easoning that 'the provision of Internet access within a public library...is for use by the public...for expressive activity,'" (*U.S.* v. *A.L.A.*, 2003, 202).

Upon reaching the United States Supreme Court, the decision was made to reverse the decision of the lower courts, and uphold the constitutionality of CIPA. The court was severely divided, not only in its 6-3 ruling, but the justification for reversing or sustaining the lower court rulings. The majority ruling, authored by Chief Justice Rehnquist, justified the reversal based on three major factors. First, that Congress has the right to place restrictions on those who voluntarily accept federal dollars. Second, that the public library does not constitute a "public forum" for the *expression* of speech, but instead for its consumption. Third, that CIPA provides

means for libraries to disable filters for adults who request access to any site for "bona fide" research (*Children's*; *U.S. v. A.L.A.*, 2003).

The Supreme Court argued, "CIPA does not 'penalize' libraries that choose not to install such software, or deny them the right to provide their patrons with unfiltered Internet access. Rather, CIPA simply reflects Congress' decision not to subsidize their doing so" (*U.S. v. A.L.A.*, 2003, 212). In other words, if a library truly had an issue with placing content filters on their Internet terminals (whether for technological or conscience reasons), they could simply opt out of receiving the federal dollars that had been earmarked for acquiring Internet access. In the article, "Internet censorship: United States *v.* American Library Association," McCarthy (2003) stated, "refusal to fund an activity is not the same as imposing a criminal sanction on the activity," (n.p.).

The Court also ruled that since libraries already filter printed materials, the same filter when applied to web sites is no less constitutional. It stated,

> Most libraries already exclude pornography from their print collections because they deem it inappropriate for inclusion. We do not subject these decisions to heightened scrutiny; it would make little sense to treat libraries' judgments to block online pornography any differently, when these judgments are made for just the same reason. (*U.S.* v. *A.L.A.*, p. 208)

Because of this exclusivity, a public library, while most definitely a public venue, is not a public forum for the expression of protected speech. A library does not provide Internet access for the purpose of allowing the publishers of web content to exercise their freedom of speech.

The minority dissent, authored by Justice Stevens, primarily focused its justification on the technological fault of the Internet filters themselves to over- and underblock websites. He

argued that the filters would overly filter legitimate constitutionally protected speech, and often fail to protect the viewer from the very sites it intends (in principle) to block (*U.S. v. A.L.A.*, 2003).

While CIPA and LSTA apply to both public and school libraries, the majority ruling did not explicitly discuss school libraries, choosing instead to only focus on public libraries. The dissenting opinion did briefly mention public schools, in the context that if a public school accepts e-Rate funding for only one computer, CIPA requires that all computers at the facility be subject to the content filter.

Impact/Implication

The impact of United States v. American Library Association is greater on the political and legislative sides than on that of education. In essence, the ruling did imply that Congress had the ability to create funding opportunities and subsequently place restrictions on those funds that meet or further its own agenda. In other words, instead of criminalizing behavior it deems illegal, it can "subsidize" behaviors that it deems proper.

The three justifications for the ruling have each been cited in at least nine cases since 2003 (*Google Scholar*). Of the three, the limitations first amendment protection has received the most citations (four cases), followed by the restrictions placed on government-appropriated funds (three cases), and the definition of a "public forum" (two cases).

The libraries will likely continue to place content filters on the website just as they did before CIPA existed. However, because of the ruling's reliance on the ability of the library to disable the filter upon request, libraries failing to do so now "risk an individual litigation in which the library will be a defendant," (Chmara, 2003, n.p.). Otherwise, libraries still maintain

the option to not receive federal funding for the purpose of acquiring and providing Internet access. This would allow them to either provide unfiltered Internet access or to have more flexibility in its choice of which sites to block and which to allow.

Because the ruling largely ignored school libraries, the impact it is likely to have is indirect and referential. The most significant implication for public schools is the ruling's focus on the definition and application of the "public forum." According to Brooks (2003), "If public libraries do not establish public forums, then school librarians have a very strong argument supporting their discretion about what can be filtered and kept off the library shelves," (79). Another lesser implication is that because CIPA (2009) only addresses the fact that "adult" users can request filters to be disabled, students, it can be inferred, do not share the same right. As the Supreme Court ruling did not explicitly address this issue, "student plaintiffs in school settings may allege that their protected speech is being censored if the software filters block their expression that is not considered obscene, vulgar, or inflammatory," (McCarthy, n.p.).

Application

While the court ruling apparently has no direct impact on public school libraries, there are several lessons that they can learn from U.S. *v.* A.L.A. in order to avoid similar litigation that could usurp precious funds for legal proceedings. First, it is important to note, as did Chmara (2010), that "[t]o date, no challenge to the application of CIPA to schools, school libraries, or minors in any library setting has been made," (21). It is unlikely that too many well-reasoned people will argue that removing Internet filters in public schools is an essential right guaranteed by the first amendment. However, public universities and colleges also fall under the jurisdiction

of CIPA if they receive the same e-Rate funding, so it may be of great importance that they review their dependence on government funding for the acquisition of Internet access on campus.

Next, as discussed previously, the removal of the content filter is permissible for an adult, but not for a minor, according to CIPA. However, it maybe be very beneficial if schools implement procedures to unblock unnecessarily filtered sites as long as they are indeed safe and appropriate for viewing by the age of student in question (Chmara, 2010). This would be especially important for schools of younger children, but secondary schools may also use this ruling as permission to keep the filters set to a relatively "high" level. It may appear that the courts may look more favorably on this than on looser content filtering combined with higher punishments for violators.

Finally, it is important for schools and districts to review all of their policies in regard to content filtering, as that will help them to decide whether or not to pursue e-Rate or LSTA funds. While the courts have found previously that schools have great latitude in determining whether materials are suitable for the curriculum or educationally valuable (Chmara, 2010) and that students (minors) do not necessarily enjoy the exact same rights and privileges as those of adults (*Tinker* v. *Des Moines*, 1969), litigation similar U.S. v. A.L.A. is almost inevitably going to find its way to the school library as well. By exploring other funding options beyond the e-Rate and LSTA funds, schools add more distance between themselves and potential lawsuits. Being that the No Child Left Behind Act also imposes filtering restrictions on those receiving federal funding (Brooks), schools and district policy makers should learn from the CIPA case and clearly define and communicate all boundaries and intentions.

In conclusion, more legislation is needed to further define the restrictions that public (government-subsidized) organizations can place on the freedom of expression, particularly in

reference to Internet content filtering. While there exists a fine line between the government "not subsidizing" unfiltered personal expression and the government explicitly restricting the freedom of personal expression, few would doubt that protecting children from the copious amounts of pornography and harmful sites on the Internet is beneficial to the betterment of society.

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